

RECEIVED
JUL - 6 1995

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

STANDARD

IN THE MATTER OF THE AMENDED UNFAIR LABOR PRACTICE CHARGE #1-91:

FRAZER EDUCATION ASSOCIATION, MEA/NEA,
COMPLAINANT,

vs.

TRUSTEES OF FRAZER ELEMENTARY SCHOOL
DISTRICT NO. 2 & HIGH SCHOOL DISTRICT NO. 2B;
SUPERINTENDENT JOHN MARLETTE,
DEFENDANTS.

FINAL ORDER

The above-captioned matter came before the Board on June 28, 1995. Mr. Arlyn Plowman appeared and presented oral argument on behalf of the Defendant. Mr. John K. Addy appeared and argued on behalf of the Complainant. Both parties filed briefs in support of their positions.

The crux of the matter entails resolution of an unfair labor practice (ULP) charge brought by the Complainant. The matter was originally heard by a department hearing examiner on August 11, 1992. The hearing examiner issued his findings of fact, conclusions of law, and proposed order (decision) on December 1, 1992. That decision found no unfair labor practice and recommended dismissal of the matter.

The Complainant filed exceptions to the hearing examiner's decision which were heard by the Board on July 7, 1993. On July 22, 1993, the Board issued an order which reversed the hearing examiner's decision and remanded the matter for modification of the hearing examiner's decision to be consistent with the Board's order. The Board's order remanding the matter was appealed to district court on August 26, 1993 where it was dismissed pending exhaustion of administrative remedies.

After the hearing examiner revised his decision, exceptions were filed by the Defendant. The Board at its meeting of December 14, 1994, considered those exceptions. The Board adopted the hearing examiner's findings of fact and remanded the matter for further modification of the hearing examiner's decision. Defendant filed exceptions to the hearing examiner's second modified decision and the matter was set for consideration by the Board at its June 28, 1995 meeting.

Prior to consideration of the merits of the matter at the June 28, 1995 meeting, the parties were informed of the recusal of Board member Steve Henry. Mr. Henry participated at the previous proceedings before the Board, however, Mr. Henry's new position presented a potential conflict of interest resulting in his recusal. Alternate Board member Tom Foley sat in Mr. Henry's place

and the parties indicated that they did not object to Mr. Foley's participation.

After consideration of the record and the arguments made by the parties it is the unanimous decision of the Board to set aside its prior order reversing the hearing examiner's December 1, 1992 decision. The Board may reconsider or modify its prior orders at any time prior to the record being filed at district court. Section 39-31-408, MCA.

Further, the Board believes that the hearing examiner's December 1, 1992, decision was correct and that the ULP should be dismissed. The Board is unable to conclude from the record that the parties ever intended to alter the terms of the collective bargaining agreement (CBA). The Board will not modify the terms of the CBA without some evidence that the parties had mutually agreed to do so. In the present case, the evidence indicates that upon learning of the overpayment, the Defendant notified the Complainant of its error and intent to discontinue paying more than the amount specified in the CBA. Accordingly, the Board believes that the hearing examiner's December 1, 1992, decision dismissing the unfair labor practice charge was correct and should be adopted by the Board.

IT IS HEREBY ORDERED that the prior orders of the Board rejecting and modifying the hearing examiner's December 1, 1992, decision in this matter be set aside.

IF IS FURTHER ORDERED that the Board adopts as its own the hearing examiner's December 1, 1993, findings of fact, conclusions of law, and proposed order. The unfair labor practice charge of the complainant is hereby dismissed.

DATED this 5th day of July, 1995.

BOARD OF PERSONNEL APPEALS

By Willis K. McKeon
WILLIS K. MCKEON
PRESIDING OFFICER

Board members Hagan, Talcott, Foley and Schneider concur.

* * * * *

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE AMENDED UNFAIR LABOR PRACTICE CHARGE #1-91:

FRAZER EDUCATION ASSOCIATION, MEA/NEA,)	
COMPLAINANT,)	
vs.)	INTERLOCUTORY
)	ORDER
TRUSTEES OF FRAZER ELEMENTARY SCHOOL)	
DISTRICT NO. 2 & HIGH SCHOOL DISTRICT NO. 2B;)	
SUPERINTENDENT JOHN MARLETTE,)	
DEFENDANTS.)	

* * * * *

On December 1, 1992, Joseph V. Maronick, Hearing Examiner for the Department of Labor and Industry, issued his Findings of Fact; Conclusions of Law; and Recommended Order for the above captioned matter. On December 16, 1992, Emilie Loring, attorney for the Complainant/Appellant, filed exceptions to Mr. Maronick's Findings of Fact; Conclusions of Law; and Recommended Order. On July 7, 1993, the Board of Personnel Appeals heard oral argument regarding Ms. Loring's exceptions. The Board then remanded the matter back to the Hearing Examiner for additional findings and a determination of the appropriate health insurance contribution rate as of July 22, 1993, the date of that order.

On May 26, 1994, the Hearing Examiner issued his amended Findings of Fact; Conclusions of Law; and Proposed Order. On June 14, 1994, Complainant filed exceptions to the amended Findings of Fact; Conclusions of Law; and Proposed Order. The Board heard oral argument regarding Complainant's exceptions on December 14, 1994.

After review of the record, consideration of the parties' oral arguments and briefs, the Board enters the following order:

1. IT IS HEREBY ORDERED that the Board adopts as its own the amended Findings of Fact by Hearing Examiner Joseph V. Maronick dated May 26, 1994.

2. IT IS FURTHER ORDERED that the amended Conclusions of Law and Proposed Order are remanded to the Hearing Examiner to strike the language which purports to alter the terms of the contract.

3. The Proposed Order shall cap the insurance contribution at \$293.79.

1 DATED this 25th day of January, 1995.

2 BOARD OF PERSONNEL APPEALS

3 By Willis M. McKeon
4 WILLIS M. MCKEON
5 CHAIRMAN
6
7
8

9 * * * * *

10 CERTIFICATE OF MAILING

11 I, Jennifer Jacobson, do hereby certify a
12 true and correct copy of this document to the following on the
13 26th day of January, 1995:
14
15

16 EMILIE LORING, ATTORNEY AT LAW
17 500 DALY AVENUE
18 MISSOULA MT 59801
19

20 PETER O. MALTESE, ATTORNEY AT LAW
21 PO BOX 969
22 SIDNEY MT 59270
23

24 ARLYN L. PLOWMAN
25 MONTANA SCHOOL BOARDS ASSOCIATION
26 ONE SOUTH MONTANA AVENUE
27 HELENA MT 59601
28
29

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 1-91:

FRAZER EDUCATION ASSOCIATION,
MEA/NEA,

Complainant,

- vs -

TRUSTEES OF FRAZER ELEMENTARY
SCHOOL DISTRICT NO. 2 AND HIGH
SCHOOL DISTRICT NO. 2B;
SUPERINTENDENT JOHN MARLETTE,

Defendant.

FINAL ORDER

* * * * *

The Findings of Fact; Conclusions of Law; and Recommended Order were issued by Joseph V. Maronick, Hearing Examiner, on December 1, 1992.

Exceptions to the Findings of Fact; Conclusions of Law; and Recommended Order were filed by Emilie Loring, Attorney for Complainant, on December 16, 1992.

Oral arguments was scheduled before the Board of Personnel Appeals on Wednesday, July 7, 1993 at 1:00 p.m. MDT.

After reviewing the record and considering the briefs and oral arguments, the Board orders as follows:

1. The Hearing Officer's Findings of Fact are affirmed and hereby adopted.

2. The Hearing Officer's Discussion is reversed and the following rationale substituted:

1
2 The Board believes that while the expired Collective
3 Bargaining Agreement provided for a \$208 cap in the District
4 health insurance contributions, the Respondent's almost three-
5 year practice of paying the entire insurance contribution
6 effectively created a different status quo with respect to such
7 contribution. Consequently, the Respondent's unilateral
8 reduction of the health insurance cap set forth in the expired
9 Collective Bargaining Agreement constituted the modification of
10 the status quo as to a mandatory subject of bargaining prior to
11 impasse. Such status quo, however, did not reflect the
12 Respondent's payment of 100% of the medical contributions.
13 Rather, the action amounted to the placement of a different cap
14 of higher value.

15 3. The Hearing Officer's Conclusion of Law that no Unfair
16 Labor Practice occurred is hereby reversed.

17 4. This case is remanded to the Hearing Officer for
18 additional findings and a determination as the Respondent's
19 appropriate health insurance contribution at this time.

20 DATED this 22nd day of July, 1993.

21 BOARD OF PERSONNEL APPEALS

22
23 By Willis M. McKeon
24 WILLIS M. MCKEON
25 CHAIRMAN

* * * * *